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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,413	03/24/2004	Taichiroo Konno	035532-0140	3864

22428 7590 12/01/2006

FOLEY AND LARDNER LLP
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WASHINGTON, DC 20007

EXAMINER

MONDT, JOHANNES P

ART UNIT	PAPER NUMBER
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3663

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/807,413

Examiner

Johannes P. Mondt

Applicant(s)

KONNO ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on _____ is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Comments in Addendum.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

ADDENDUM TO NOTICE OF NON-COMPLIANT AMENDMENT (37

C.F.R1.121)

Election/Restrictions

Applicant's election without traverse of Species 1 (First Embodiment, Figure 3; [0064]-[0072]) in the reply filed on 9/22/06 is acknowledged.

NON-COMPLIANT AMENDMENT

Reasons for Non-Compliant Amendment are as follows:

The reply filed on 4/20/01 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

Amendment filed 8/25/06 is non-responsive in view of Response to Election filed 9/22/06. In particular, all claims, through independent claim 1, recited an "undoped layer or low carrier concentration layer formed between the active layer and the second conductivity type cladding layer, wherein the undoped or low carrier concentration layer is a layer other than the active layer and comprises a bandgap greater than the active layer". Applicant elected the "First Embodiment", illustrated by Figure 3 only. Neither in the Description ([0064]-[0072]) nor in said Figure 3 is there a teaching of an undoped layer so recited, as is evident from the absence of any layer between the active layer (3) and the second conductivity type cladding regardless of whether the n-type cladding layer (2) or the p-type cladding layer (4) is selected for identification with said second conductivity type cladding layer. Furthermore, counter to the recitation in said claims through independent claim 1 of "an undoped layer inserted into the second conductivity type contact layer", no undoped layer in between any layer between any second

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conductivity type layer and the "preventing" layer (6) can be identified in the First Embodiment while layer 6: the recited claim language requires a plurality of layers between the second conductivity type cladding layer and the preventing layer which does not read on the First Embodiment (Figure 3). For at least the above reasons, none of the claims read on the elected Species 1. Accordingly, the Amendment is held non-responsive. See 37 CFR 1.111(b).

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johannes P. Mondt whose telephone number is 571-272-1919. The examiner can normally be reached on 8:00 - 18:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JPM

November 29, 2006

Patent Examiner:

A handwritten signature in black ink, appearing to read 'J. Mondt', is written over a horizontal line.

Johannes Mondt (Art Unit: 3663)